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10/776,993	02/10/2004	Raymond Smith	006961.P001	5861

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EXAMINER
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LEFF, STEVEN N

ART UNIT	PAPER NUMBER
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1761

MAIL DATE	DELIVERY MODE
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05/09/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/776,993

Applicant(s)

SMITH, RAYMOND

Examiner

Steven Leff

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 2/10/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- Claims 1-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
  - The term “substantially” is indefinite in claims 3, and 6. It is unclear as to how something may be substantially circular or substantially planar, and to what extent the term encompasses if not completely circular or completely planar.
  - Claims 4 and 5 are indefinite due to the phrase “of the pizza” as it teaches the limitation with respect to a food, not the device which is claimed. Further, the size of the food may be changed in size, thus the diameter of the supporting surface is undefined.
  - The phrase “dish or saucer like member” in claim 6 is unclear as the phrase represents the device being “like” a dish or saucer with respect to the;
    1. Shape
    2. Size
    3. Material
    4. Color
  - Regarding claim 9, the phrase “such as” renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).
  - Claim 16 is rejected, as the phrase “may be provided” is not a positive recitation, thus one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear if the limitation(s) following this phrase are required within the claimed invention.
  - Claim 16 is rejected as the phrase “the cut or slot opening” lacks antecedent basis.
  - The phrase “elastically deformable” is unclear in claim 17. It is unclear what the difference is between deformable, and elastically deformable.

- The phrase “memory thermoplastic material” is unclear in claim 18. It is unclear what the difference is between thermoplastic material, and memory thermoplastic material.
- The phrase “dish shape” in claim 18 is unclear as the phrase represents the device being a cup, a plate, a saucer, a bowl, a platter, etc.
- Regarding claim 18, the phrase "for example" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).
- Claim 9 is unclear due to the phrase “suitable polymeric materials”. It is unclear if the phrase represents a type of heat resistant material, or if the phrase represents a different material which the device contains.
- Claim 9 is indefinite due to the phrase “suitable polymeric materials”. It is unclear for what purpose the materials are to be “suitable”. (Contrast this, for example, with claim 16).
- Claims 20 and 21 are rejected due to the fact that they appear to conflict with claim 18 from which they depend. Claim 18 teaches that the device “returns to a domed or inverted dish shape”, however claim 20 teaches a device which “is assembled from two planar members”, and claim 21 teaches that the device is formed from “a flat blank”. It is unclear how planar, and/or flat members may form a bowl or dish shape.
- Claims 20 and 21 appear to be in conflict with claim 18 from which they depend. Claim 18 teaches a dome or dish shape, where claims 20 and 21 teach planar or flat members. It is unclear how the dome or dish shape is formed when using planar or flat members as is depicted in figures 8-9. It appears they should instead depend from claim 8 or 19.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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- Claims 1-7, 9-10, 12-13, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Gics (5565228).

With respect to claim 1, Gics teaches a method of cooking a pizza comprising placing a pizza in an oven (col. 1 line 53+) with at least the central region of the pizza resting upon a pizza supporting device having an upper supporting surface such that the central portion of the pizza is raised above the level of the peripheral region of the pizza during cooking by means of the upper supporting surface. (fig. 8, col. 2 line 57+, col. 4 line 16+)

Gics continues by teaching a device for supporting at least a portion of a pizza during cooking in an oven, the device comprising an upper supporting surface for supporting at least a central region of a pizza such that the central region is raised above the level of the peripheral region of the pizza during cooking. (fig. 8, col. 2 line 57+, col. 4 line 16+) More specifically Gics teaches a device for supporting at least a portion of a pizza during cooking in an oven, the device comprising a baking tray or plate of sufficient size to support a pizza to be cooked, the tray having a raised central region defining a raised pizza supporting surface for supporting the central region of the pizza above the peripheral region thereof during cooking. (fig. 8, col. 2 line 57+, col. 4 line 16+)

With respect to claims 1, 2, and 22, and specifically the limitation “the central region/portion of the pizza is raised above the level of the peripheral region of the pizza during cooking by means of the upper supporting surface”, it is noted that Gics teaches a method of cooking a frozen pizza. Therefore, at the beginning of the cooking cycle the pizza will be solid, i.e. frozen, thus in a generally linear shape. During the cooking cycle, as the pizza dough becomes pliable, the periphery of the pizza would inherently lower, or sag, with respect to the center of the pizza due to only central portion being supported and not the periphery as is depicted by figure 8. In addition, Gics teaches a collection reservoir for collecting toppings which may “cascade over the sides of the pizza”, where the cascaded cheese depicted in figure 8, is interpreted by the examiner to be the periphery of the pizza in this instance. Therefore Gics positively teaches, with respect to both interpretations of the claim, at figure 8 and at column 4, line 17+ “the central portion of the pizza is raised above the level of the peripheral region of the pizza during cooking by the upper supporting surface”.

Gics continues by teaching a device wherein the upper supporting surface comprises a substantially circular raised portion, where the diameter of the upper supporting surface is less than the diameter of the food to be cooked. (fig. 8) With respect to figure 8, in the instance that the device remains constant in size, and the size of the food is changed, Gics teaches a device which is capable of providing an upper supporting surface which is between 25% and 75% of the diameter of the food to be cooked, or between 40% and 60% of the diameter of the food to be cooked.

Gics continues by teaching that the device comprises an inverted dish or saucer like member having a substantially planar upper supporting surface (fig. #8, ref. # 28, col. 2 line 57) and an outer edge region extending downwardly therefrom. (fig. #8, ref. # 27, col. 2 line 58+) Gics further teaches that the device is dome shaped. (fig. 8)

Gics continues by teaching that the device is formed from a heat resistant material such as card, metal, ceramic, or a suitable polymeric material (col. 3 line 6). In addition Gics teaches that the device is formed from aluminum. (col. 3 line 15)

Gics further teaches that the upper supporting surface of the device has at least one aperture therein (col. 2 line 54+), and more specifically a single aperture provided in the center of the supporting surface. (col. 2 line 54+)

- Claims 2-5, 8-9, 11-12, and 14-15 are rejected under 35 U.S.C. 102(b) as being anticipated by DeRienzo (5223685).

With respect to claim 2, DeRienzo teaches a device for supporting at least a portion of a pizza during cooking in an oven, (col. 2 line 67+) the device comprising an upper supporting surface for supporting at least a central region of a pizza such that the central region is raised above the level of the peripheral region of the pizza during cooking. (col. 2 line 67+)

With respect to claim 2, and specifically the limitation "the central region of the pizza is raised above the level of the peripheral region of the pizza during cooking by means of the upper supporting surface", it is noted that DeRienzo teaches a method of cooking a frozen pizza and further states where the platform has been adapted to support the specific food and/or pizza. In the instance where the pizza is larger than the platform, the periphery of the pizza would extend beyond the support platform. Therefore, at the beginning of the cooking cycle the pizza will be solid, i.e. frozen, thus in a generally

linear shape. During the cooking cycle, as the pizza dough becomes pliable, the periphery of the pizza would inherently lower, or sag, with respect to the center of the pizza due to only central portion being supported and not the periphery due to the difference in size. Thus DeRienzo positively teaches a device where "the central portion of the pizza is raised above the level of the peripheral region of the pizza during cooking by the upper supporting surface".

DeRienzo continues by teaching a device wherein the upper supporting surface comprises a substantially circular raised portion, where the diameter of the upper supporting surface is less than the diameter of the food to be cooked. (col. 2 line 66+) In the instance that the device remains constant in size, and the size of the food is changed, DeRienzo teaches a device which is capable of providing an upper supporting surface which is between 25% and 75% of the diameter of the food to be cooked, or between 40% and 60% of the diameter of the food to be cooked.

DeRienzo continues by teaching that the device comprises a plurality of radially extending arms extending outwardly from a common central axis (col. 4 line 35+, fig. 1). The device is formed from heat resistant material (col. 4 line 67+), and further includes a perforated supporting surface (col. 3 line 23+), or a surface that includes at least one aperture therein (fig. 1). DeRienzo further teaches that the upper supporting surface comprises a peripheral rim and a central supporting ring attached to the rim by at least two spaced radial legs, (fig. 1) and more specifically by three to six equal spaced legs. (fig. 1)

- Claims 1-7, 9-13, 16-18, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Young (5585027).

With respect to claim 1, Young teaches a method of cooking a pizza comprising placing a pizza in an oven (abstract) with at least the central region of the pizza resting upon a pizza supporting device having an upper supporting surface such that the central portion of the pizza is raised above the level of the peripheral region of the pizza during cooking by means of the upper supporting surface. (fig. 18, col. 5 line 35+, col. 6 line 22+)

Young continues by teaching a device for supporting at least a portion of a pizza during cooking in an oven, the device comprising an upper supporting surface for supporting at least a central region of a pizza such that the central region is raised above

the level of the peripheral region of the pizza during cooking. (fig. 18, col. 5 line 35+, col. 6 line 22+) More specifically Young teaches a device for supporting at least a portion of a pizza during cooking in an oven, the device comprising a baking tray or plate of sufficient size to support a pizza to be cooked, the tray having a raised central region defining a raised pizza supporting surface for supporting the central region of the pizza above the peripheral region thereof during cooking. (fig. 18, col. 5 line 35+, col. 6 line 22+)

With respect to claims 1, 2, and 22, and specifically the limitation "the central region/portion of the pizza is raised above the level of the peripheral region of the pizza during cooking by means of the upper supporting surface", it is noted it is noted that Young teaches a method of cooking a frozen pizza and further states where the platform has been adapted to support the specific food and/or pizza. (col. 5 line 35+) In addition it is noted that the raised surfaces on the top surface do not extend to the edge of the device. Therefore, at the beginning of the cooking cycle the pizza will be solid, i.e. frozen, thus in a generally linear shape. During the cooking cycle, as the pizza dough becomes pliable, the periphery of the pizza would inherently lower, or sag, with respect to the center of the pizza due to only central portion being supported and not the periphery. Therefore Young positively teaches, "the central portion of the pizza is raised above the level of the peripheral region of the pizza during cooking by the upper supporting surface".

Young continues by teaching a device wherein the upper supporting surface comprises a substantially circular raised portion (fig. 4 and fig. 6) where the diameter of the upper supporting surface is less than the diameter of the food to be cooked (col. 6 line 51+, fig. 18, col. 5 line 35+, col. 6 line 22+). In the instance that the device remains constant in size, and the size of the food is changed, Young teaches a device which is capable of providing an upper supporting surface which is between 25% and 75% of the diameter of the food to be cooked, or between 40% and 60% of the diameter of the food to be cooked. In addition in the instance that the size of the food remains constant, and the size of the device is changed, Young teaches a device which is capable of providing an upper supporting surface which is between 25% and 75% of the diameter of the food to be cooked, or between 40% and 60% of the diameter of the food to be cooked.

Young further teaches that the device comprises an inverted dish or saucer like



member having a substantially planar upper supporting surface and an outer edge region extending downwardly there from. (fig. 18, col. 2 line 52) Young further teaches at figure 18 a device which is dome shaped. (fig. 18, col. 2 line 52)

Young continues by teaching that the device is formed from a heat resistant material such as card, metal, ceramic, or a suitable polymeric material (col. 4 line 5+). In addition Young teaches that the device is formed from aluminum. (col. 4 line 11) Young further teaches that the upper supporting surface of the device is perforated (col. 6 line 25+), and/or has at least one aperture therein (col. 6 line 25+).

Young continues by teaching a device where at least one cut or slot (col. 6 line 62+) may be provided extending from the outer peripheral rim of the device towards the upper supporting surface (col. 6 line 62+), the cut or slot opening up to allow the peripheral rim of the device to be squashed flat (col. 6 line 62+), the device being formed from a suitably resilient material such that the device returns to its original shape once the squashing or retaining force has been removed and is of sufficient thickness and strength that the device can subsequently support a pizza without deforming (col. 4 line 16+).

Young further teaches that at least the peripheral rim of the device is formed from an elastically deformable material (col. 4 line 16+), such that the peripheral rim (col. 6 line 60+) can be squashed flat yet can retain its shape upon removal of a squashing or retaining force to allow the device to support the central region of a pizza above a cooking surface, and more specifically teaches that the device is made from a 'memory' thermoplastic material (col. 4 line 24) such that it can be supplied in a flat condition but returns to a domed or inverted dish shape when heat is applied thereto, (col. 6 line 14+, col. 5 line 42+, col. 4 line 16+, col. 2 line 52+). With respect to claims 16-18, and 21 it is noted that Young teaches a support device made from materials which provide rigidity to the device, including plastic. In addition Young teaches perforations, where it is the examiners interpretation that a device as taught by Young, which is made of plastic and includes the perforations would meet the limitations of the above claims by adjusting the thickness of the layer, and folding along the perforations. The thickness of the device, as well as the specific materials would determine the elasticity or "memory" which the device exhibits when pressure is released from a folded configuration.

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- Claims 2, 4-5, 8-9, 19-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Skerker et al. (5008508).

With respect to claims 2, 4-5, 8-9, 19-20, Skerker et al. teaches a device for supporting at least a portion of a pizza during cooking in an oven, (abstract) the device comprising an upper supporting surface for supporting at least a central region of a pizza such that the central region is raised above the level of the peripheral region of the pizza during cooking. (col. 2 line 62+)

With respect to claim 2, and specifically the limitation "the central region of the pizza is raised above the level of the peripheral region of the pizza during cooking by means of the upper supporting surface", it is noted that Skerker et al. teaches a method of cooking a food and further states where the platform has been adapted to support the specific food. In the instance where the pizza is larger than the platform, the periphery of the pizza would extend beyond the support platform, either during cooking or in the case of fresh dough when it is placed on the smaller support surface. During the cooking cycle, as the pizza dough becomes pliable, the periphery of the pizza would inherently lower, or sag, with respect to the center of the pizza due to only central portion being supported and not the periphery due to the difference in size. Thus Skerker et al. positively teaches a device where "the central portion of the pizza is raised above the level of the peripheral region of the pizza during cooking by the upper supporting surface".

Skerker et al. continues by teaching a device which comprises a plurality of radially extending arms extending outwardly from a common central axis (col. 3 line 28+, fig. 2). The device is formed from heat resistant material (col. 3 line 58+), and more specifically is made from sheet material, such as heat resistant card or plastics (col. 3 line 58+), comprising a plurality radially extending arms extending from a common vertical axis (col. 3 line 28+, fig. 2) and being interconnected on the common axis such that the lower edges of the arms define a lower supporting surface of said device and at least a portion of the upper edges of the arms define the upper supporting surface of said device. (col. 2 line 56+)

Skerker et al. further teach a device where the device is assembled from two planar members provided with transverse slots adjacent a central region thereof

whereby said members can be interconnected perpendicular to one another to define four radially extending arms arranged at 90 degree spacing (col. 3 line 28+).

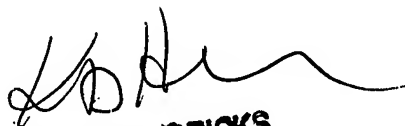
**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Leff whose telephone number is (571) 272-6527. The examiner can normally be reached on Mon-Fri 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571)272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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**KEITH HENDRICKS**  
**PRIMARY EXAMINER**